

October 6, 2005

Economic Affairs Committee
SJR35 Study Group
Helena MT

I will be attending the Oct. 12 meeting in Helena.

In the meantime, please accept the following comments regarding general question C:
“Can changes be made to improve administrative attachment?”

My comments are specific to two aspects of administrative attachment: Budgeting and the quasi-judicial role of boards.

Budgeting

Suggest boards be encouraged/allowed to annually frame their budgetary needs (staffing, investigators, equipment, salaries, benefits, etc.) separate from the recharges required for shared staffing, etc. by the department so that biennial budgets and appropriation requests can be focused on the board's immediate needs, then fitted, as necessary, into the department's budget. The purpose here is to control what at least one board has deemed unnecessary and uncontrolled recharges.

This board does not argue with the need for recharges - all shared spaces, staffing, benefits, etc., are required for adequate handling of multiple tasks within the division administering to the boards. However, from my experience, the board members have little or no control over how recharges will be calculated, nor any say in efficiency measures they may request to keep their overall budgets / appropriations - and, consequently, recharges - under control.

For over a decade, I have witnessed a steady increase in this board's recharges. Often, these recharges have little impact on the efficiency or administrative capacity to the licensees. As a representative to a sector of the licensees represented by this board, I find it difficult to justify continued increases in license fees with no obvious increase in what I term 'customer service.' For example, this board is facing the need to increase license fees again (for the third time in a decade) to cover administrative budget increases that cannot be tied directly to customer service.

In one incident, a previous department (Dept. of Commerce) decided to upgrade a wholly-necessary database system for the board's licensees. No board input was accepted on this decision, though the board I was familiar with faced a one-time charge of \$67,000, a sum no budget or appropriation was prepared for. Happily, ensuing years found the charge redistributed among other boards and the sum total charged this board was much reduced if not repaid from other funds. Still, the specter of a department deciding what measures, administrative or otherwise, are "good" for the boards - at the boards expense - is a decision that should be shared by all boards, especially since board (and department) income rests solely on the fees paid by licensees, the board's customers.

Interestingly, recharges have long been determined as a percentage of a board's appropriation, not budget, a fiscal feature never voted on by the board. Only recently have recharges been scaled to FTE's working for a board, and most recently scaled to actual shared work-time and workspace. Each successive calculation technique is an improvement, though an appropriate method has yet to be developed by both the department and the board(s) in union.

Given that the average licensee's contact with his or her board is only at year's end licensing time, these 'customers' wonder why it costs more and more to do what they consider the only aspect they deem necessary, possibly even a necessary evil. I am trying to find a way, via annual board budget reviews and real, hands-on cooperation with the department, to give the board a way to satisfy these licensees, their customers.

Quasi-judicial role

The current setup of screening panels and adjudication panels is certainly aiding even-handed decision-making. At the same time, the internal check-and-balance effect of the adjudication panel's ability to deny a agreed-upon stipulation (a.k.a. plea bargain) can be improved in practice, if not spirit.

Often, the board prosecuting attorney (not to be confused with the board counsel who advises the board on a day-to-day basis) has applied his or her own standards, typically based on their sense of whether the charge and discipline combination is worthy of successful appeal or not, to determine sufficient punishment for a particular defendant's action. Nonetheless, when the board members sitting on the adjudication panel either request leniency or seek increased punishment, these panel members frequently face counsel's arguments against their decision either way.

Consider allowing better information about the board attorney's considerations as to appropriate penalties for specific violations to be passed on to the adjudication panel members, specifically, before the stipulation is agreed upon. Add to this better communication between, say, the panel chair and the board attorney, just to keep both abreast of stipulation standards or guidelines the particular counsel chooses to apply.

I say this because during my terms on this board, seven board attorneys came and went, often disrupting the continuity of disciplinary actions. To provide for adequate, yet fair-handed discipline over a variety of violations and prosecuting attorneys, this board adopted a penalty matrix - a schedule of appropriate penalties for the variety of violations the board statutes and regulations declare - that has proven successful when faced with both board member and board attorney personnel changes.

Thank you for the opportunity to comment on these aspects of the administrative attachment relationship between one board and the department.

Robin Cunningham